

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Benjamin Heyward,)	C/A No. 6:15-859-JFA
)	
Plaintiff,)	
)	
v.)	ORDER
)	
South Carolina Department of Corrections,)	
)	
Defendant.)	
_____)	

The *pro se* plaintiff, Benjamin Heyward, brings this action pursuant to 42 U.S.C. § 1983, alleging that he was subjected to excessive force while he was an inmate at the Lieber Correctional Institution, part of the South Carolina Department of Corrections (“SCDC”).

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that the court should summarily dismiss this action because the named defendant, the South Carolina Department of Corrections, is immune from suit under the Eleventh Amendment to the United States Constitution. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report. The plaintiff

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

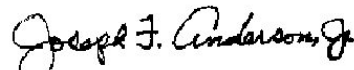
instead filed a motion to dismiss the action contending that he “made a mistake and sent his 1983 section to be filed. Plaintiff was informed that he cannot file his 1983 when he has a pending complaint in the lower court concerning his 1983.” Plaintiff also indicates that the lower court is going to dismiss his complaint due to not having the filing fee, but that he is going to include the claims of this action into his state court action.

As the Magistrate Judge notes in his Report, the South Carolina Department of Corrections, the only defendant named by the plaintiff in this action, is immune from suit under the Eleventh Amendment.

After a careful review of the record, the applicable law, the Report and Recommendation, and the plaintiff’s motion to dismiss this action, the court finds that the Magistrate Judge’s recommendation is proper and it is incorporated herein by reference. Accordingly, this action is dismissed without prejudice and without issuance and service of process. The Clerk shall docket the plaintiff’s motion to dismiss (ECF No. 12) as moot.

IT IS SO ORDERED.

March 10, 2015
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge